



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

25 JUN 2001

CEPR-P (715)

MEMORANDUM FOR COMMANDERS/DIRECTORS, ALL USACE COMMANDS


SUBJECT: PARC Instruction Letter (PIL) 2001-04, Revision to EFARS Part 33 – Protests, Disputes, and Appeals

1. In accordance with EFARS 1.201-100, this PIL is issued to amend and revise the language in the EFARS. The reason for the change is that in July 2000 the Engineer Board of Contract Appeals (Engineer Board) was merged into the Armed Services Board of Contract Appeals (ASBCA). Now that the merger has occurred, the Engineer Board is no longer a separate Board, and the ASBCA has jurisdiction over contract appeals involving both civil works and military contracts. Recently, the PARC published a revision to EFARS Appendix A – Contract Requests, Claims and Appeals to address changes in trial practice and procedure necessitated by the merger.
2. Substitute the enclosed pages as follows:

Remove page	Insert page
33-4	33-4
3. If the subordinate command prefers to rely on a printed EFARS book (as opposed to the electronic EFARS on the PARC homepage), each substituted page is to be stamp dated on the bottom of the page with the corresponding date of this memorandum. Upon completion of the page removals, addressees are to post the PIL with the regulation. Addressees are also to ensure distribution of this PIL to all staff elements as necessary (i.e. engineering, construction, and legal offices).
4. Questions concerning this PIL should be directed to Wayne Hardin at (202) 761-8647.

FOR THE COMMANDER:

Encl.


BUNNATINE H. GREENHOUSE
Principal Assistant Responsible
for Contracting

CF: Directors/Chiefs of Contracting



ENGINEER FAR SUPPLEMENT (EFARS)

PART 33 — PROTESTS, DISPUTES, AND APPEALS

33.190-101 Bid protest after action report.

The requirement for after action reporting will be satisfied by entering the required data in the CEALS-MTS Bid Protest Notebook, described in 33.102-100, as soon as practicable. GAO bid protest decisions are posted on the Internet within 24 hours after they are issued (unless subject to protective order), at: <http://www.gao.gov/decisions/bidpro/bidpro.htm>

33.190-102 Contracting officer's reports on GAO and agency protests.

(a) In addition to the documents described in FAR 33.103(d) and 33.104(a)(3), each Contracting Officer's report on an agency or GAO protest shall include:

(1) Findings of fact prepared with complete documentation and including all the facts, both favorable and unfavorable, to the Contracting Officer's position.

(2) Review by legal counsel with citation to pertinent decisions of the Comptroller General.

(b) The Contracting Officer's report shall not be released to any member of the public, including the protestor and other interested parties, without the prior approval of the office having authority to decide an agency protest or to determine the final agency position on a GAO protest.

(c) Administrative report.

(1) The administrative report prepared in response to a protest should include, at a minimum:

- (i) The Contracting Officer's signed statement of relevant facts;
- (ii) the protest itself;
- (iii) the solicitation;
- (iv) the protester's bid or proposal;
- (v) the successful bid or proposal;
- (vi) an abstract of bids;
- (vii) all evaluation documents;
- (viii) any other relevant documents; and
- (ix) an index to all documents submitted.

(2) The administrative report should be assembled in a secure binder fastened at the left side with a fastener that will permit the full page to be read. The index of all documents should be placed as the first page. Each document should be separated by a divider with a tab attached. The Contracting Officer's statement should be paginated. Sizable files should be divided into two or more volumes. The cover of the report should identify it as the protest file and include the file number. Drawings should be folded and placed into an envelope in the binder. The solicitation/contract should be enclosed as a separate exhibit if it is voluminous in size.

SUBPART 33.2 — DISPUTES AND APPEALS

33.203 Applicability.

33.203-100 Agency board of contract appeals.

The Armed Services Board of contract appeals is the agency board having jurisdiction over appeals arising from final decisions of the contracting officer on Corps of Engineers contracts. The procedures for handling contract appeals are set forth in EFARS Appendix A, Part 3 – Contract Requests, Claims, and Appeals.